



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Support Management Services, Inc.

File: B-229583

Date: March 17, 1988

DIGEST:

The Small Business Administration (SBA) did not act improperly in deciding not to perform an analysis of the impact that placing a contract in the section 8(a) program would have on a small business concern that had performed only a small fraction of the work being procured during prior years, since the procurement properly has been determined to involve "new work," and the SBA's policy is not to perform an impact analysis in such a situation.

DECISION:

Support Management Services, Inc. (SMS), protests the decision by the Department of the Navy and the Small Business Administration (SBA) to place a contract for logistics management support services in the Small Business Act's section 8(a) program. The proposed cost-plus-fixed-fee contract, with a basic year and two 1-year options, will be performed at the Naval Ship Systems Engineering Station, Port Hueneme, California. Section 8(a), 15 U.S.C. § 637(a) (1982), authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. SMS contends that the SBA improperly did not analyze the contract award's impact on SMS, the incumbent small business contractor for part of the support services required, before setting aside the entire requirement for the 8(a) program.

We deny the protest.

SBA regulations provide that the SBA will presume an adverse impact on small business concerns, and will not accept a procurement for the 8(a) program, where a small business concern has been the recipient of two or more consecutive awards of the item or service within the last 24 months, and the estimated dollar value of the award would be 25 percent

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or more of the small business' most recent annual gross sales. 13 C.F.R. § 124.301(b)(8)(iv) (1987).

According to the SBA, the concept of adverse impact does not apply to "new" requirements that previously have not been procured by the contracting activity. The SBA states that it is standard SBA policy to treat a requirement as "new" where a contract that previously was awarded to a small business is materially expanded or modified so that the ensuing requirement is not substantially similar to the original one due to the magnitude of the expansion or modification. In such a case, the SBA notes, there is no incumbent to the expanded or modified requirement.

The Navy consolidated various requirements for logistic maintenance management services for certain combat systems, weapon systems, and associated equipment, and determined that it represented "new" work. In an August 10, 1987, letter to the SBA offering the procurement for consideration under the 8(a) program, the Navy stated that the required services had never been offered by public solicitation under a small business set-aside but that approximately \$200,000 of the \$4,985,694 estimated 3-year contract cost covered work that was identical to work being performed by SMS under contract No. N00123-85-C-0023 (the LO-MIX contract), which was due to expire on September 30, 1987, and that this work would not exist beyond fiscal year (FY) 1988. Although the SBA then initiated an analysis of the proposed contract's impact on SMS, it subsequently determined, on the basis that the offered procurement represented a new requirement, that an adverse impact analysis was not required. The SBA so informed SMS on September 24, 1987. SMS protested the determination to the SBA on September 28 and, on October 27, received an SBA response confirming the agency's determination. SMS thereafter timely filed its protest with our Office.

SMS contends that the offered procurement is not a "new" requirement because in addition to the LO-MIX contract, which the firm asserts in fact will continue in diminishing amounts over the life of the proposed contract, SMS has performed much of the other required work under another contract, N00123-85-D-0058, and pursuant to numerous small purchase orders. In support of its contention, SMS has submitted an exhibit which illustrates that it has performed work in the five areas of the proposed contract's statement of work; SMS contends that the Navy ignored the work SMS has performed under purchase and delivery orders in making its determination that the proposed contract represents "new" work. SMS maintains that the contractual vehicle--the proposed omnibus contract--may be new, but the services involved are not new requirements.

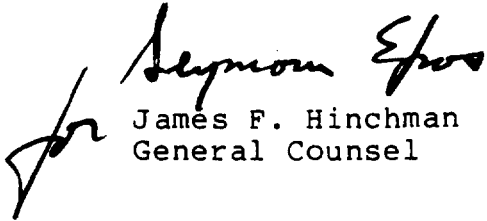
The Navy, which, with the SBA, has reported on this protest, responds that the work to be procured is both quantitatively and qualitatively different from work performed by SMS under the LO-MIX contract, delivery orders issued under contract -0058, and purchase orders. To illustrate the quantitative difference, the Navy has provided budget figures which indicate that, in the past, most of the work to be contracted was performed by government employees, as opposed to by SMS under the LO-MIX contract or through delivery orders and purchase orders. Additionally, the Navy notes that the LO-MIX contract initially was limited in scope and that its scope decreased even further during the 3 years of SMS contract performance. The Navy now estimates that the LO-MIX contract work will amount to 6 percent of the FY 1988 requirement under the protested contract; 4.8 percent in FY 1989; and 3.6 percent in FY 1990. Qualitatively, the Navy maintains there are significant differences between the work that was performed by SMS and the work that is to be performed under the 8(a) contract because the new effort will involve support services for different programs or combat/weapons systems and will require the initial development, rather than mere maintenance, of documents and data bases. The Navy notes that the purchase orders, representing discrete, well-defined tasks, were issued to handle the overflow work that from time to time could not be handled by government personnel.

We will not review an allegation that the SBA did not comply with its internal policies and the guidelines that complement SBA regulations implementing the 8(a) program absent a showing of possible fraud or bad faith. Janke and Company, Inc.--Request for Reconsideration, B-216152.2, Nov. 13, 1984, 84-2 CPD ¶ 522. We find no such showing here.

Although SMS did perform some of the work required under the proposed contract, the record overall indicates that the support services SMS provided were limited in scope and represented a fraction of the total requirement. In FY 1987, the support services SMS provided totaled \$273,900 (the LO-MIX contract plus delivery and purchase orders), and under the proposed contract, the total cost of the support requirement will increase to an estimated \$1,661,898 per year. We have no reason to question the conclusion that this increase in the contract support requirement represents a material expansion of the original requirement in terms of either the scope or the nature of the services, thereby justifying the determination that the proposed contract represents "new" work; that determination, in turn, comports with SBA policy under which contracts that are materially modified or expanded are considered new requirements. In sum, there is nothing in the record showing possible fraud

or bad faith on the part of Navy or SBA officials warranting a review of the SBA's determination.

The protest is denied.

for
James F. Hinchman
General Counsel